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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

**AB DISCOUNT DEPOT LLC and
AHMED MANSHA**

Plaintiffs,

against

**UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES**

Defendant.

Case No.:

COMPLAINT

COMPLAINT

DESCRIPTION OF ACTION

1. This action is brought pursuant to the Administrative Procedure Act, 5 U.S.C. § 701 *et. seq.*, by plaintiffs, AB Discount Depot LLC and Ahmed Mansha, against the defendant, the United States Citizenship and Immigration Services (USCIS), asking the Court to hold unlawful and set aside the United States Citizenship and Immigration Service (USCIS or the agency)'s decision of March 6, 2019¹, denying for a second time AB Discount's Form I-140, Petition for Alien Worker upon Ahmed Mansha's behalf in File No. LIN 169-083-7347. Inasmuch as the record shows that the agency's decision is not in accordance with law, the decision should be held unlawful and set aside.
2. Further, inasmuch as the repeated baseless denials of this petition have resulted in the approval in this matter being unlawfully withheld and unreasonably delayed, this matter should be remanded to the USCIS with the instructions that it be properly re-adjudicated forthwith.

DESCRIPTION OF THE PARTIES

3. Plaintiff AB Discount Depot LLC (AB Discount) is a New Jersey Limited Liability Company.

¹ This is the final decision in this matter and the one of which the plaintiffs seek review by this Court.

4. The plaintiff Ahmed Mansha is a citizen of Pakistan, lawfully in the U.S. as a “treaty investor” pursuant to 8 U.S.C. § 1101(a)(15)(E) and residing in Nassau County, New York.
5. The defendant United States Citizenship and Immigration Services is an agency within the Department of Homeland Security with, among other things, responsibility for the adjudication of Forms I-140, Petition for Alien Worker, filed by U.S. employers to qualify certain of their employees for immigration to the United States. It is based in the District of Columbia.

JURISDICTION

6. This being a civil action against the United States arising under the Immigration and Nationality Act, 8 U.S.C. § 1101 et. seq., and the Administrative Procedure Act, 5 U.S.C. § 701 et seq., both laws of the United States, original jurisdiction over this matter is vested in this Court by 28 U.S.C. § 1331.

VENUE

7. This Court has venue over this matter under 28 U.S.C. § 1391(e)(1)(C) in that plaintiff Ahmed Mansha resides in Nassau County, New York, which is within the judicial district of this Court.

BRIEF NARRATIVE OF PERTINENT FACTS

8. The petitioner, AB Discount, is a retailer of low-cost consumer products which has recently acquired as a wholly owned subsidiary a marketing company, Mansha, Inc.

These two entities will work closely with Shami Textiles, a Pakistan based manufacturer of clothing, to expand Shami's highly successful clothing products to the American consumer, both directly through AB Discount Depot's retail outlet and through other clothing retailers throughout the United States. . AB Discount is 51% owned by Mansha Ahmed, the beneficiary of its Form I-140. Mr. Ahmed is also a 50% owner and Managing Director of Shami Textiles. Mr. Mansha is "in charge" of Shami Textiles, subject only to his partner's veto. In its letter in support of the petition, AB Discount indicated that it wish to employ Mr. Mansha as the Managing Member of its own organization performing the following duties:

For an estimated 56% of his time as Managing Member of AB Discount Depot LLC he will oversee and work with the General Manager of AB Depot Discount Depot to completely review the operation of the company from the bottomup to determine how it can be run more efficiently. In performing each of these duties the Managing Member will oversee the action of the general manager in the sense that he will look to the general manager to be his resource in providing him the information needed to be able to perform the above tasks as well as providing the first draft of reports on each of these subjects, to which the Managing Member would make the final revisions and give final approval.

This will involve each of the following:

1. Reviewing the sales history for each of the products stocked by AB Discount Depot to determine which should be retained, which should be the subject of price negotiations, and which should be dropped. 5%
2. Determining how to best use AB Discount Depot as an outlet for clothing manufactured by Shami Textiles under its own label. 5%.
3. Review the possibility of adding additional products by obtaining lists of available products from suppliers and working with the general managers to determine the pros and cons of each product. 5%
4. Review the entire layout of the store to determine how it can be redesigned to maximize workflow efficiency and encourage sales. 5%
5. Obtaining and reviewing bids from contractors to effect the redesign once decided upon. 3%
6. Reviewing the performance of each supplier to determine whether they are well suited to continue to work with the company. 5% .
7. Soliciting proposals from other suppliers to give provide products to the company 3%
8. Reviewing the work history of each employee with an eye towards their appropriate compensation, as well as to determine whether they should be promoted and/or terminated. 5%
9. Interviewing and hiring additional employees 5%

10. Preparing employee manuals to make clear the company's expectations of each employee and what they should expect from the company. 5%
11. Preparing a 5 year plan for the company's expansion, including the development of new locations. 5%
12. Analyze financial statements, sales reports, and other performance indicators to determine trends and plan how to optimize the company's future performance 5%

- Meeting and discussing with the general manager and troubleshooting day to day problems such as employee disciplinary problems, minimization of product shrinkage, and significant purchases, any action pertaining to which must be approved by the Managing Member after having received a full report and recommendation by the general manager; 10%
- Meeting with the company's suppliers to discuss concerns which may arise out of the review discussed above, and renegotiate supply agreements as necessary. 5%

An estimated 25% of the time of Managing Member of AB Discount Depot LLC he will oversee and work with the General Manager of Marisha, Inc., AB Discount Depot's marketing subsidiary,¹¹ to completely review the operation of the company from the bottom up to determine how it can be operated to better facilitate the sales of Shami Textile products in the U.S. This will include

1. Reviewing a complete list of all known large outlets of casual clothing in the U.S. to determine which should be approached regarding distributing Shami Textiles products and the best approach for doing so. 5%
2. Reviewing in detail the performance of each Marisha, Inc. employee with an eye towards their appropriate compensation, as well as to determine whether they should be promoted and/or terminated. 5%
3. Interviewing and hiring additional employees 5%
4. Reviewing with the general manager day to day problems and they arise and troubleshooting 5%
5. Negotiating agreements to supply Shamsi Textile products to new distributors. 5%
6. Working with the company's CPA to organize both AB Discount Depot and Mansha Inc. 's affairs in such a way as to minimize taxation and the avoidance of unnecessary penalties. (4%)

The duties of the supervisory personnel supervised by Mr. Ahmed:

A. Mohammed Baig, General Manager of AB Discount Depot. LLC.

As the General of AB Discount, Mr. Baig supervises the day to day to work activities of the store and the following employees in the indicated tasks as well as ordering, price negotiation, writing the hours to send to the accountant and distribute checks.

Tahir Quershi, Store Manager, responsible for groceries, automotive products.

Farida Babar, Cashier

Salfo Cornpadre, Responsible for cleaning supplies health and beauty

Doodnauth Dhari, Responsible for Floor Cleaning, Window Cleaning, Shelf Cleaning Maintenance.

Huzaifa Baig, General Labor

B. Mazalier Shah, Marketing Manager of Mansha. inc.

Talah Furrakh - Sales Yasrab Akram - Sales

9. The petition also included a letter from Ahmed Faraz, Mr. Mansha's partner in Shami Textiles², in which he indicated that while employed at Shami Textiles since 2002 Mr.

Mansha performed the following duties as its Managing Director:

The Managing Director has both managerial duties related to overseeing department managers and also direct-contact duties related to negotiations with buyers and outside vendors. The Managing Director spends significant time managing other managers and supervisors.

30% supervising the general manager
20% supervising the printing manager
30% supervising the finance manager
10% supervising the administration manager
5% supervising the construction manager
5% negotiating with buyers about price and quality

10. Mr. Faraz also described the duties of the persons the Managing Director of Shami

Textiles oversaw and how he supervised them:

Supervision Duties:

General Manager: The GM oversees several departments at the factory: QA, Production, PPC, Merchandise, Cutting, and Printing and EMS. Each department has its own manager. The GM oversees these managers. The Managing Director oversees the work of the GM. The Managing Director and the GM meet daily to discuss the previous day's work, addressing issues that are ongoing or new, reviewing quantity of product produced, dealing with machine maintenance, production schedules as they related to shipment dates, and exploring the possibility of hiring temporary workers.

Printing Manager: The Managing Director meets daily with the Printing Manager to discuss issues regarding production. The topics include shipment dates, general production issues, creating, reviewing and analyzing samples new products to determine the feasibility of profitably mass producing them, and progress regarding new customers and quality control. They also discuss efforts to find new products, new inks, and generally how to both increase the quality and reduce costs. The Managing Director and Printing Manager coordinate how best to communicate with buyers, particularly if issues

² In this document his name is misspelled as Ahmed Franz.

arise regarding price and/or quality. The Managing Director oversees the Printing Manager's interactions with buyers. The Managing Director also oversees the Printing Manager's progress if redo's are required after rejections from buyers. The meetings also focus on trouble-shooting in general and understanding why product was sent back.

Finance Manager: The Managing Director and the Finance Manager meet daily about expenses owed to suppliers and payments due from buyers. They also set dates of payments. In addition, they discuss how best to manage the company's overall finances, specifically as they relate to cash-flow needs. They discuss possible loans and the overall relationship with banks.

Administrative Manager: The Administrative Manager has responsibilities similar to that of Human Resource Directors, as well as looking after "compliance issues", specifically certification requirements imposed by foreign purchasers. This involves certification from international organizations confirming that Shamsi Textiles is complying with international safety, labor, and quality standards, such as the requirement that it maintain a certain number of fire extinguishers and specific regulations regarding how goods are packed. Also, it is required by buyers to be certified by the Custom-Trade Partnership Against Terrorism and Worldwide Responsible Credited Production. To this end, daily meetings are held between the Managing Director and the Administrative Manager. They also discuss attendance issues, firing and hiring.

Construction Manager/Contractor: The Managing Director meets with the manager in charge of construction about twice a week. This is an independent contractor, not an employee. The Construction Manager supervises at varying times anywhere between 10 and 50 workers involved in expanding and upgrading Shamsi Textiles' factory. These meetings include general progress reports and discussions about financing and troubleshooting problem arising in this work.

Direct Contact Duties:

Negotiation with buyers about price and quality.

11. An organizational chart submitted with the petition demonstrated that the managers supervised by Mr. Mansha in turn supervised at least five managers themselves. In fact, as of February 16, 2017 Shami Textiles had 242 employees. AB Discount and its subsidiary counted 10 employees at the time of filing of the petition, , as well as a gross annual income in excess of \$500,000. .

12. In response to this petition the USCIS issued a request for additional evidence on September 12, 2017, to which AB Discount filed a response which included AB Discount's

Share Certificates and Register, Shami Textiles' Garment Manufacturing Association Membership 2014-2018, Shami Textiles' Purchase Invoices 2015 to 2017, Shami Textiles' Tax Return, Shami Textiles' Payroll Summary, Shami Textiles' Evidence of International Trade, Shami Textiles' 2014 Partnership Deed, Sworn Statement of Ahmed Mansha, AB Discount's Tax Documents, and Evidence of the Ownership of AB Discount Depot LLC. The Statement of Ahmed Mansha elaborated upon his duties at Shami Textiles and his proposed duties at AB Discount as follows:

For an estimated 56% of my time as Managing Member of AB Discount Depot LLC I will oversee with the General Manager of AB Depot Discount Depot to review the operation of the company from the bottom up to determine how it can be run more efficiently. In performing each of these duties I will oversee the action of the general manager in the sense that I will look to the general manager to be my resource in providing me with the information needed to be able to perform the above tasks as well as providing the first draft of reports on each of these subjects, to which the Managing Member would make the final revisions and give final approval. This will involve each of the following:

1. Reviewing the sales history for each of the products stocked by AB Discount Depot to determine which should be retained, which should be the subject of price negotiations, and which should be dropped. 5%. Example: hired employee to properly record and a spreadsheet be made to analyze the quantity and price of most popular products.
2. Determining how to best use AB Discount Depot as an outlet for clothing manufactured by Shami Textiles under its own label. 5%. Example: Decided to make space for adding low priced garments by eliminating products which were not as profitable.
3. Review the possibility of adding additional products by obtaining lists of available products from suppliers and working with the general managers to determine the pros and cons of each product. 5%. Example: Decided to increase the variety of furniture and Home Goods products.
4. Review the entire layout of the store to determine how it can be redesigned to maximize workflow efficiency and encourage sales. 5%. Example: Decided to narrow down aisles and add stalls which can hold more products to use space efficiently. Decided to add offices for manager and employees so they can have meetings with suppliers.
5. Obtaining and reviewing bids from contractors to effect the redesign once decided upon. 3%. Example: Negotiated with security company to increase security of store and install a better Point of Sale system, Cameras and anti-theft systems.
6. Reviewing the performance of each supplier to determine whether they are well suited to continue to work with the company. 5%. Example: Ordered to make a detailed record of suppliers and their competitors, delivery timing, product prices history, discounts they give and their age of relationship with the store.

7. Soliciting proposals from other suppliers to give provide products to the company 3%
8. Reviewing the work history of each employee with an eye towards their appropriate compensation, as well as to determine whether they should be promoted and/or terminated. 5%. **Example: Laid off one manager to reduce cost and promote an employee who could do the job better.**

9. Interviewing and hiring additional employees 5%.

10. Preparing employee manuals to make clear the company's expectations of each employee and what they should expect from the company. 5%

11. Preparing a 5-year plan for the company's expansion, including the development of new locations. 5%. **Example: Paid attention to an aggressive advertising strategy and securing loans for rapid expansion.**

12. Analyze financial statements, sales reports, and other performance indicators to determine trends and plan how to optimize the company's future performance 5%.

For an estimated 25% of my time I will work as a Managing Member of AB Discount Depot LLC overseeing and working with the General Manager of Mansha, Inc., AB Discount Depot's marketing subsidiary, "to completely review the operation of the company from the bottom up to determine how it can be operated to be better facilitate the sales of Shami Textile products in the U.S. Therefore, in performing each of these duties the General Manager will assist me in developing the strategy required below, including, for example, developing the necessary information need to develop the and will implement strategies as developed. This will include reviewing a complete list of all known large outlets of casual clothing in the U.S. to determine which should be approached regarding distributing Shami Textiles products and the best approach for doing so. 5%. **Example: Order that a list be compiled of all brands who have fewer than 50 stores and making strategies of approaching them.**

14. Reviewing in detail the performance of each Mansha, Inc. employee with an eye towards their appropriate compensation, as well as to determine whether they should be promoted and/or terminated. 5%

15. Interviewing and hiring additional employees 5%

16. Reviewing with the general manager day to day problems and they arise and troubleshooting 5%. **Example: A challenge will be made to provide samples to potential buyers. I will order that sample kits be made and sent out to all potential buyers at once to.**

17. Negotiating agreements to supply Shami Textile products to new distributors. 5% more efficiently. **Example: Shortlisted potential buyers after manager gave a report after the salesmen had meetings with potential buyers.**

In addition to the time spent supervising the Managers of AB Discount Depot, LLC. and Mansha, Inc. I will spend 4% of my time working with the company's CPA to organize both AB Discount Depot and Mansha Inc.'s affairs in such a way as to minimize taxation and the avoidance of unnecessary penalties

The remaining 15% of my time will be spent socializing with employees, customers of AB Discount Depot LLC and Marisha Inc, and other people in the industry so as to be able to stay informed as to developing trends and to not be completely depend upon my managers for information.

The product of AB Discount Depot, LLC. is a wide variety of inexpensive retail products, including groceries and household items. The exact productive and administrative tasks necessary to produce these products is that they need to be ordered from suppliers,

removed from the suppliers' trucks when they arrive, stacked in the backroom and then moved from the backroom to the store shelves. The cashiers must take money and credit card payments from the customers who pay for the goods. The general manager takes the money from the cashiers at the end of the day and takes the money to the bank. I do not do any of these things.

Mansha Inc. 's service is to convince retail clothing stores to purchase the clothing and other textiles manufactured by Shami Textiles, Inc. and other Pakistani clothing manufacture for a commission. The salesmen work under the supervision of the general manager to find and approach retail clothing stores and persuade them of the quality and value of our customer's products. When interested buyers are found, the general manager will negotiate prices with them in consultation with me and subject to my approval. I will perform all tasks related to goal-setting! policy-making and discretionary decision making, in consultation with and with the assistance of the General Managers of AB Discount Depot, LLC. and Mansha, Inc.

13. On February 7, 2018, the USCIS issued a decision denying AB Discount's petition for the following reasons:

1. "A qualifying relationship through common ownership of the foreign entity and the petitioner has not been established."
2. "The record does not establish that beneficiary's role with the petitioner is qualifying."
3. "The record does not establish that the beneficiary's role with the foreign entity was executive or managerial in nature."

14. On approximately March 8, 2018, AB Discount filed a motion to reconsider and reopen the USCIS's decision. Filed with that motion was a third statement pertaining to the beneficiary's duties at AB Discount and at Shami Textiles, in which Mr. Mansha elaborated yet again upon the duties which he did and would perform at those companies:

1. This statement is to provide more detail regarding my job duties and Shami Textiles and ABB Discount, Inc.
2. Shami Textiles is engaged in the sale and manufacture of garments. I am a 50% partner in this company with my brother, Ahmed Faraz.
3. Accordingly, I shared with him complete responsibility for the livelihood of all 271 employees of the company. The complete burden of all responsibility for keeping this company in business lay on the shoulders of myself and the my brother.
4. Every day I spent virtually my entire day meeting with my primary managers (the general manager, the printing manager, the administrative

manager, the finance manager and the construction manager) in my office or on the plant floor.

5. Each day they report to me on the developments in the departments under their control, ask my advice, make requests for additional funds, listen to my suggestions, often arguing with me quite vigorously.

6. For example, one of the biggest issues which I met, discussed and fought with my managers about was my desire to making structural changes in the company's operations so as to reduce our overhead, which is now so high it is making us uncompetitive in the international market.

7. Recently it has become much more difficult to compete in the U.S. market place due to competition from lower cost garment makers such as Bangladesh, Mexico, Vietnam and China.

8. In my work I have spent much time studying how garments are being manufactured in Bangladesh, Mexico, Vietnam and China.

9. I have noticed in particular how much more efficient the garment manufacturing business seems in those countries there when compared with our business, and how they seem to be using the latest methods, such as lean manufacturing

10. In contrast to them our factor is still using conventional systems from 20-30 years ago.

11. As a consequence we are very inefficient in our use of machinery. For example, we have

about 360 sewing machines, but only 80-100 of them are actually in use.

12. Further, our factory is much too big for our volume.

13. Even worse, our managers don't even know about things like e-commerce nor e-management.

14. We have the capacity to manufacture 300,000 garments per month (such as hooded jackets) but instead we only produce 70000 garments per month.

15. As a consequence our prices are somewhat above comparable products in the world market.

16. This is partly because we pay our workers more than our competitors, but most because our workers are inefficient and unskilled, and our managers are unwilling to learn new methods.

17. Accordingly I made many suggestions to the mentioned managers as to how we could improve ourselves but, I am sorry to say, in doing so I faced much resistance from them because they thought my ideas were not workable.

18. In part to prove to my own managers that I was right and they were wrong I was working on creating a model unit within our factor before I left for the United States.

19. This unit would use resources more efficiently and so reduce labor and electricity costs.

20. To prove my point I instructed my general manager to do a survey to find out how many workers were assigned to one sewing machine internationally, and he concluded it was 1.75

21. Consequently, then I ask our administrative and productions managers to find out how many workers we were using per machine, and it turned out it was 3.

22. Even though only one person was actually operating the machine, we had 2 people helping the operator (such as obtaining the machine and/or supervising its use.

23. Further, many resources are being was, not just labor, but electricity and space.

24. This all arises from the failure to adopt modern world standard procedures internally.

25. Therefore I was planning to relocate people away from the stitching So there are three main departments affected which is at the cutting department the stitching department and finishing department. I wanted to relocate some employees from those two department to the cutting department.

26. To do this I knew we would need to train people, and so interview and hire trainers who can best train our workers to be more efficient.

27. I also felt that the pay structure in the factory is not good enough it's not motivating enough for the employees. So I instructed the accounting manager to look around at how people are paid in the factories surrounding our area.

28. He did this and reported that while we paid a fixed salary, most other factories pay a salary and a per piece rate.

29. Consequently I have been considering also switching to a combined salary and per piece rate so as to motivate employees to be more efficient.

30. All of these plans were put on hold when I went to the U.S. - I am looking forwarding to visiting Pakistan in the near future so I can continue to press forward in this important endeavor with all the tremendous new knowledge I have gained since coming to the United States.

15. The motion also challenged the corresponding numerated portions of the

USCIS's decision as follows:

1. The record showed that there was a qualifying relationship between the foreign entity and the petitioner inasmuch as Mr. Mansha was a 50% owner with equal right of control of the foreign entity, Shami Textiles, and owned 51% of AB Discount.

2. The record establishes that the beneficiary's role with the petitioner is qualifying inasmuch as it shows that he spends approximately 75% of his time supervising managerial or supervisory personnel which is expressly defined in both the Immigration and Nationality Act and the Code of Federal Regulations as employment in a managerial capacity.

3. The record establishes that the beneficiary's role with Shami Textiles is qualifying inasmuch as it shows that he spends approximately 90% of his time supervising managerial or supervisory personnel which is expressly defined in both the Immigration and Nationality Act and the Code of Federal Regulations as employment in a managerial capacity.

16. On April 19, 2018, the USCIS reconsidered its decision, but, nevertheless, denied the petition again.

17. The decision failed to clearly state whether the USCIS was continuing to maintain that the U.S. company and the foreign entity lacked a qualifying relationship. While conceding

that it had been wrong in denying that Mr. Ahmed controlled AB Discount, it nevertheless mused that:

However, the statement from counsel includes a statement "as a partner in Shami Textiles, Mr. Mansha was, as a matter of law, in charge of it subject only to his partner zero". This statement indicates that the beneficiary, as managing partner of the foreign entity, may not control the entity. Regulations and case law indicate that ownership and control are important in establishing eval qualifying relationship".

18. Ultimately, the decision failed to indicate whether it in fact had found that a qualifying relationship did not exist.

19. The decision also asserted that "the record does not establish that either the offered position with the petitioner or the beneficiary's previous position with the foreign entity were in a qualifying role in accordance with title eight, Code of Federal Regulations, part 204.5(j)(2)" *Id.*

20. The decision did not dispute that the beneficiary met each of the requirements of employment in a managerial capacity, but merely stated that "descriptions provided were not detailed enough to clearly show that the beneficiary's role with the petitioner is qualified", albeit not specifying what further details were required. *Id.* Likewise the decision did not dispute that the beneficiary met each of the statutory / regulatory criteria for being employed in a managerial capacity with Shami Textiles, but again merely stated that "the descriptions of the duties are not detailed enough to clearly indicate that the beneficiary's position with the foreign entity was in a qualified role." *Id.*

21. On August 2, 2018 the plaintiffs commenced an action in the U.S. District Court for the Eastern District of New York seeking judicial review of the USCIS's decision April 19, 2018, which was given Case No. 1:18-cv-04383-CBA-RER and assigned to Judge Carol Bagley Amon.

22. On October 23, 2018, the parties entered into a Stipulation and Order of Dismissal

With Prejudice pursuant to which:

1. USCIS will promptly re-open the Form I-140;
2. Once the Form I-140 is re-opened, USCIS intends to re-adjudicate the Form I-140;
3. In connection with its commitment to re-adjudicate the Form I-140, USCIS states that the involved business entities have a qualifying relationship and that the relevant overseas' position was managerial in nature;
4. Within 15 days of this stipulation and order of dismissal being filed with the Court, USCIS shall, in connection with its re-adjudication of the Form I-140, issue a Request for Evidence (the "RFE"). The RFE will seek evidence regarding whether the offered position in the United States meets the requirements of a qualifying managerial position.
5. As soon as a delivery tracking number for plaintiffs' RFE-response-package is provided by the shipper, plaintiffs, through their undersigned counsel, shall, by email, convey that delivery tracking number to the undersigned counsel for defendant.
6. Within 30 days of USCIS' receipt of plaintiffs' response to the RFE, USCIS shall issue a decision on the (reopened) I-140.
7. This action shall be dismissed with prejudice, with each party to bear its own costs, expenses, and fees.

23. This stipulation and order was duly entered by Judge Amon on the same date.

24. Following the entry of this Order and the USCIS's reopening of the plaintiffs' proceedings, on October 25, 2018 the USCIS issued a Request For Evidence showing that Mr. Mansha will be employed in a primarily managerial or executive capacity when he becomes a permanent resident, to which AB Discount responded on January 22, 2019

25. On March 6, 2019, the USCIS issued a decision again denying the instant petition, holding that:

A review of the totality of the record, including the beneficiary's description of his position, the organizational chart, and other documentation regarding the operation of the petitioner and its US subsidiary, does not demonstrate that the beneficiary would primarily be acting in a managerial capacity."

26. In coming to this conclusion, the USCIS found that

- a. the beneficiary's discussion of his duties attributes a full 25% of his time to duties related to employee management, such as interviewing and hiring, performance review, and preparation of company manuals for employees, plus an additional 15%

“socializing” with employees and customers. However, there appears to be a disproportionate amount of time in employee management relative to the size and complexity of the petitioner and Mansha, Inc. There is also little information about what is involved in “socializing” with employees or customers, or how this would be managerial in nature.

27. The Decision did not dispute in anyway that any other of Mr. Mansha’s duties were managerial in nature, nor the percentages of time he spent performing them.

COUNT ONE

INASMUCH AS THE USCIS DOES NOT DISPUTE THAT MR. MANSHA HAS BEEN OFFERED A JOB IN WHICH HE WILL BE PRIMARILY EMPLOYED IN A MANAGERIAL CAPACITY, ITS DENIAL OF THIS PETITION IS NOT IN ACCORDANCE WITH LAW.

28. In the Stipulation and Order of Dismissal terminating the prior action the USCIS concede that “the involved business entities have a qualifying relationship and that the relevant overseas' position was managerial in nature;”. That left one and only one issue in this case, “whether the offered position in the United States meets the requirements of a qualifying managerial position.”

29. 8 U.S.C. § 1153(b)(1)(C) includes among those immigrant permitted to immigrate to the United States in the first employment preference category:

Certain multinational executives and managers.--An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executives

Accordingly, for this petition to be approved AB Discount needed only to establish that Mr. Mansha “ seeks to enter the United States in order to continue to render services to (AB Discount) in a capacity that is managerial or executives”

30. Here, although the USCIS found that Mr. Mansha would not be “primarily be acting in a managerial capacity” it only asserted that two (2) of his duties did not (entirely) constitute employment in a managerial capacity:

- b. the beneficiary’s discussion of his duties attributes a full 25% of his time to duties related to employee management, such as interviewing and hiring, performance review, and preparation of company manuals for employees, plus an additional 15% “socializing” with employees NSCI140NSCI14000009475743 5 of 10 www.uscis.gov and customers. However, this appears to be a disproportionate amount of time in employee management relative to the size and complexity of the petitioner and Mansha, Inc. There is also little information about what is involved in “socializing” with employees or customers, or how this would be managerial in nature.

31. There is however no evidence in the record to support the agency's claim that 25% is a disproportionate amount of time in employee management relative to the size and complexity of AB Discount and Mansha, Inc.³

32. In any event, the agency's totally unexplained and completely unsubstantiated finding that 25% appears to be a disproportionate amount of time in employee management relative to the size and complexity of the petitioner and Mansha, Inc begs the question of what would be a proportionate amount of time employment employee management for these entities. 20%? 15%? Or does the agency seriously mean to suggest that the president of a small company should not spend any of his time at all in employee management?

33. In any event, even if that were the case, and even if one were to except its face value the totally unsubstantiated or even explained that socializing with company employees is not a duty of management⁴, this would still mean that the USCIS is claiming that at more 40% of Mr.

³ In fact, the use of the equivocating word "appears" that the agency has doubts about its own conclusions. Had it been certain of them, it would've stated that 25% is a disproportionate amount of time in employee management.

management relative to the size and complexity of the petitioner and Mansha, Inc
⁴ Management experts disagree: "There is perhaps no other part of management that has great as great an influence on reducing burnout as successfully successful socializing new employees and the values of the organization. Socialization, a critical component of introducing the employee into the organization, is a complex process directed the acquisition of appropriate attitudes, cognitions, emotions, values, motivations, skills, knowledge, and social

Manasha time is spent performing nonmanagerial duties, which means it has conceded that 60% of his time is in fact spent performing managerial duties.

34. **(P)rimarily**" means **more than half.**" *Bd. of Governors Fed. Res. Sys. v. Agnew*, 329 U.S. 441, 450 n.2, 67 S. Ct. 411, 416 (1947).

Therefore, inasmuch as the USCIS's decision does not dispute that at least 60% of Mr. Manasha time will be spent performing employed in a managerial capacity, it has conceded that he will be primarily employed in a managerial capacity and, in light of the concessions made in settlement of the prior action its decision denying this petition is not in accordance with law and, pursuant to 5 U.S.C. § 706(2) should be held unlawful and set aside.

Further, inasmuch as the repeated baseless denials of this petition have resulted in the approval in this matter being unlawfully withheld and unreasonably delayed, this matter should be remanded to the USCIS with the instructions that it be properly re-adjudicated forthwith.

patterns necessary to cope with the social and professional environment. Socialization differs from and is great a greater impact than either injunction or and orient or orientation and subsequent productivity and retention. It can also help to build loyalty and team spirit. This is the time to instill the employee with pride in the organization and the unit. This type of affect affective learning becomes the foundation for subsequent increased satisfaction and motivation". "Leadership roles and management functions in nursing: theory and application" by Bessie L Marquis Carol Jorgensen Huston.

<https://books.google.com/books?id=38mzZLwcOe0C&pg=PA391&lpg=PA391&dq=manager+socializing&source=bl&ots=aKII0FePUU&sig=ACfU3U3WhVi7UVe6QdEB5iLizhINA6LrXA&hl=en&sa=X&ved=2ahUKEwi909D-v87hAhWRwFkKHa3SDQU4FBD0ATADegQICRAB#v=onepage&q=manager%20socializing&f=false>

Respectfully Submitted

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